

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX APPLICATION No 40 of 1997

and

INCOME TAX APPLICATION NO. 41 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE A.R.DAVE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF INCOME TAX

Versus

STAR BUILDERS

Appearance:

MR MIHIR JOSHI for Petitioner
SERVED for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE A.R.DAVE

Date of decision: 19/12/97

ORAL JUDGEMENT (Per R.K.Abichandani,J.)

The applicants propose the following two questions in paragraph 4 of the applications, on the ground that they arise from the orders of the Tribunal.

1. "Whether, the Appellate Tribunal is right in law and on facts in deleting the addition made under Section 69A in respect of unexplained investment

in construction?"

2. "Whether, the Appellate Tribunal is right in law and on facts in deleting the addition in respect of the estimated profit on unexplained investment?"

The Tribunal had rejected the applications under Section 256(1) made by the Revenue, in respect of these two questions, on the ground that the Assessing Officer had not examined the books of account and rejected them only because the cost of construction determined by the Valuation Officer was higher. Reliance was placed by the Tribunal on a decision of the High Court of Rajasthan in CIT Vs. Pratapsingh Amrosingh Rajendrasingh, reported in 200 ITR 788, in which it was held that simply because the valuation report was of a higher amount, the books cannot be said to be of un-reliable. Prima facie, we find that the Assessing Officer, after detailed discussion, held in paragraph 5 of his order that the books of account were liable to be rejected. The aforesaid questions therefore, arise for our opinion from the orders of the Tribunal. The Tribunal is therefore, directed to furnish statement of case in respect of these cases under Section 256(2) of the Income Tax Act, 1961. Rule is made absolute in each of these applications with no order as to costs.

*/Mohandas